



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on November 11, 2015, at Madison, Wisconsin. The record in this case was held open 10 days after hearing in order for petitioner to submit additional documentation. No documentation was received during this period.

The issue for determination is whether the agency erred in its determination of a MA overpayment in the amount of \$3,192.85.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. Petitioner was enrolled in the BC Core Plan. Petitioner was informed of his obligation to report gross monthly income exceeding \$1,436.25 per month.
3. Petitioner income exceeded this reporting requirement in January 2014, through October 2015.
4. Petitioner received MA benefits to which he was not entitled between March 2014 to November 2014 in this amount of \$3,192.85.

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The BadgerCare Plus Core Plan expands medical assistance coverage to persons between 18 and 64 years old who do not have any children under 19 years old. *BadgerCare Plus Eligibility Handbook*, § 43.2. Recipients' gross income cannot exceed 200% of the federal poverty level; no deductions are allowed from income when determining eligibility. *Id.*, § 43.7.2. Those receiving benefits and who are not exempt from paying premiums must report any change that causes their income to exceed 133 of the federal poverty level. *BadgerCare Plus Handbook*, § 43.8.1.1.1. Once the change of income has been reported, the recipient must verify the income or her benefits will end. *Id.*

At the time of petitioner's BC review in November 2013 petitioner reported income from [REDACTED] in the amount of 916.36 and rental property income of \$503.91 for a total of \$1,420.27. A notice was sent to petitioner on November 25, 2013 informing petitioner that he was required to report any income exceeding \$1,436.25 per month. As of March 2014, petitioner reported that the rental income ceased and his income was less than the 100% FPL level requiring a premium. Petitioner thus no longer was required to pay a premium.

The agency received an alert indicating a discrepancy between petitioner's self-reported income and the income reported by his employer. Petitioner's income exceeded 133%FPL in January 2014 and required reporting by February 10, 2014. Petitioner did not report this increase which would have affected his March 2014 benefits.

[REDACTED]

The agency calculated the overpayment by review of the income reported by [REDACTED] [REDACTED]. This is beneficial for petitioner as he likely would have been entirely ineligible for the BC Core program due to Core enrollees being directed to the Marketplace in April 2014 if their income exceeded 133% FPL, which petitioner's did.

At hearing, petitioner's only argument was that the Department should have relied on his 2014 tax information rather than the wage information from his employer. He initially stated that his income has not changed. Petitioner may not realize that the use of tax return data is particularly useful to verify income for a person with self-employment income. In this case, the agency stopped counting self-employment (rental) income and was only relying on the wages as of January 2014. So, the tax return does not matter. Furthermore, this does not obviate the requirement that he report income when it fluctuates to nearly triple the amount the agency believed he was earning. The agency was correct to rely on the employer reports. Those reports far exceed the \$916 that the agency thought he was earning each month at [REDACTED]. The employer reports that wages in February, March and April of 2014 were over \$2,000 from [REDACTED]. In September and October the [REDACTED] wages were over \$2,500 while the petitioner was still believed to be earning less than \$1,000. Petitioner had an obligation to report the increases in income. He did not. He received MA benefits that he was not entitled to receive.

### **CONCLUSIONS OF LAW**

The agency did not err in determining a \$3,192.85 MA overpayment.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

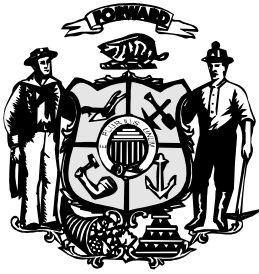
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 28th day of December, 2015

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 28, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability